

By: Oliverson

H.B. No. 3754

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of the pledging or encumbering of  
3 domestic insurers' assets in accordance with marketplace  
4 practices.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 422.002, Insurance Code, is amended to  
7 read as follows:

8 Sec. 422.002. PURPOSES. (a) The purposes of this chapter  
9 are to:

10 (1) require an insurer to maintain unencumbered assets  
11 in an amount equal to the insurer's policy reserve liabilities;

12 (2) provide preferential claims against assets in  
13 favor of an owner, beneficiary, assignee, certificate holder, or  
14 third-party beneficiary of an insurance policy; and

15 (3) prevent the pledge or encumbrance of assets in  
16 excess of certain amounts without a prior written order of the  
17 commissioner.

18 (b) This chapter and the powers granted and functions  
19 authorized by this chapter shall be exercised to accomplish the  
20 purposes of this chapter.

21 SECTION 2. Section 422.003, Insurance Code, is amended to  
22 read as follows:

23 Sec. 422.003. DEFINITIONS. In this chapter:

24 (1) "Asset" means any property in which an insurer

1 owns a legal or equitable interest that is reported as an asset in  
2 the domestic insurer's statutory financial statements most  
3 recently filed with the department of insurance.

4 (2) "Claimant" means an owner, beneficiary, assignee,  
5 certificate holder, or third-party beneficiary of an insurance  
6 benefit or right arising from the coverage of an insurance policy to  
7 which this chapter applies.

8 (3) "Reserve assets" means the assets of an insurer  
9 that are authorized investments for policy reserve liabilities  
10 under this code.

11 (4) "~~Reserve~~ Policy reserve liabilities" means the  
12 liabilities that an insurer is required under this code to  
13 establish for all of the insurer's outstanding insurance policies.

14 SECTION 3. Section 422.005, Insurance Code, is amended to  
15 read as follows:

16 Sec. 422.005. EXEMPTIONS. (a) This chapter does not apply  
17 to:

18 (1) variable contracts for which separate accounts are  
19 required to be maintained;

20 (2) a reinsurance agreement ~~or~~ and any trust account  
21 related to the reinsurance agreement if the reinsurance agreement  
22 and related trust account meet the requirements of Chapter 493;

23 (3) an assessment-as-needed company or insurance  
24 coverage written by an assessment-as-needed company;

25 (4) an insurer while:

26 (A) the insurer is subject to a conservatorship  
27 order issued by the commissioner; ~~or~~

1 (B) a court-appointed receiver is in charge of  
2 the insurer's affairs;

3 (5) an insurer's reserve assets that are held,  
4 deposited, pledged, or otherwise encumbered to secure, offset,  
5 protect, or meet the insurer's policy reserve liabilities  
6 established in a reinsurance agreement under which the insurer  
7 reinsures the insurance policy liabilities of a ceding insurer if:

8 (A) the ceding insurer and the reinsurer are  
9 authorized to engage in business in this state; and

10 (B) in accordance with a written agreement  
11 between the ceding insurer and the reinsurer, reserve assets  
12 substantially equal to the policy reserve liabilities the reinsurer  
13 must establish on the reinsured business are:

14 (i) deposited by or withheld from the  
15 reinsurer and held in the custody of the ceding insurer, or  
16 deposited and held in a trust account with a state or national bank  
17 domiciled in this state, as security for the payment of the  
18 reinsurer's obligations under the reinsurance agreement;

19 (ii) held subject to withdrawal by the  
20 ceding insurer; and

21 (iii) held under the separate or joint  
22 control of the ceding insurer; or

23 (6) any pledge, encumbrance or lien contemplated by or  
24 customarily included in the documentation for:

25 (A) an investment or transaction authorized by  
26 Sections 424.068, Subchapter D of Chapter 424, 425.121 and 425.151  
27 of the insurance code, or their successor provisions, regarding a

1 foreign investment, securities lending, a repurchase, a reverse  
2 repurchase, or a dollar roll transaction, or authorized by 424.068,  
3 Subchapter E of 424, 425.124 through 425.132, or 425.151 of the  
4 insurance code, or their successor provisions, regarding a foreign  
5 investment or risk control transaction; and

6 (B) a custodial or trust agreement for an  
7 insurer's securities authorized by Section 423.103 of the  
8 insurance code, or its successor provisions, that provides for a  
9 limited grant of a lien or security interest for payment of fees and  
10 expenses due to a service provider or intermediary under the  
11 custodial or trust agreement.

12 (b) Notwithstanding this section, the commissioner may  
13 examine any asset, reinsurance agreement, or deposit arrangement  
14 described by Subsection (a)(5) at any time, in accordance with the  
15 commissioner's authority under this code to examine an insurer.

16 SECTION 4. Section 422.051, Insurance Code, is amended to  
17 read as follows:

18 Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF ASSETS. (a)  
19 An insurer shall at all times maintain unencumbered assets in an  
20 amount equal to the insurer's policy reserve liabilities.

21 (b) An insurer may not pledge or otherwise encumber:

22 (1) the insurer's assets in an amount that exceeds the  
23 amount of the insurer's capital and surplus; or

24 (2) more than 10 percent of the insurer's reserve  
25 assets.

26 (c) The calculation of the quantitative limits in (a) and  
27 (b) shall be based on the statutory financial statements for the

1 insurer most recently filed with the department of insurance as of  
2 the date of determination of compliance. The date that a pledge or  
3 encumbrance is made shall be the applicable date used to determine  
4 compliance with the limits in (b). Compliance with the quantitative  
5 limits in (b) shall be achieved when, on the date of determination  
6 of compliance, the sum of the value of a proposed pledge or  
7 encumbrance, when added with the values of all previous and still  
8 outstanding pledges and encumbrances, does not exceed any  
9 quantitative limit in (b).

10           (e d) Notwithstanding any other provision of this  
11 section, on application made to the commissioner, the commissioner  
12 may issue a written order approving the pledge or encumbrance of an  
13 insurer's asset in any amount if the commissioner determines that  
14 the pledge or encumbrance will not adversely affect the insurer's  
15 solvency.

16           SECTION 5. Section [422.052](#), Insurance Code, is amended to  
17 read as follows:

18           Sec. 422.052. REPORT TO COMMISSIONER. (a) Not later than  
19 the 10th day after the date an insurer pledges or otherwise  
20 encumbers an asset, the insurer shall report in writing to the  
21 commissioner:

22                   (1) the amount and identity of the pledged or  
23 encumbered asset; and

24                   (2) the terms of the transaction.

25           (b) Annually, or more often as required by the commissioner,  
26 the insurer shall file with the commissioner a statement sworn to by  
27 the insurer's chief executive officer that:

1 (1) title to assets that equal the amount of the  
2 insurer's policy reserve liabilities and that are not pledged or  
3 otherwise encumbered is vested in the insurer;

4 (2) the only assets of the insurer that are pledged or  
5 otherwise encumbered are those identified and reported in the sworn  
6 statement, and no other assets of the insurer are pledged or  
7 otherwise encumbered; and

8 (3) the terms of the transaction pledging or otherwise  
9 encumbering the assets are those reported in the sworn statement.

10 (c) The insurer is not required to file the report required  
11 under subsection (a) of this section for pledges or encumbrances  
12 permitted in a transaction approved by the commissioner under  
13 Section 1152.055.

14 SECTION 6. Section 422.053, Insurance Code, is amended to  
15 read as follows:

16 Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A  
17 person, corporation, association, or other legal or governmental  
18 entity that accepts as security for an insurer's debt or other  
19 obligation a pledge or encumbrance of an asset of the insurer that  
20 is not made in accordance with this chapter is considered to have  
21 accepted the asset subject to a superior, preferential, and  
22 automatically perfected lien in favor of a claimant of the insurer.

23 (b) Subsection (a) does not apply to: (i) an asset of an  
24 insurer in conservatorship or receivership if the commissioner in  
25 the conservatorship proceeding, or the court in which the  
26 receivership is pending, approves the pledge or encumbrance of the  
27 asset; or (ii) pledges or encumbrances ~~disclosed~~ permitted in a

1 transaction approved by the commissioner under Section 1152.055.

2 SECTION 7. Section 422.054, Insurance Code, is amended to  
3 read as follows:

4 Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an  
5 insurer is involuntarily or voluntarily liquidated, a claimant of  
6 the insurer has a prior and preferential claim against all assets of  
7 the insurer other than the assets that have been pledged or  
8 encumbered in accordance with this chapter- or the assets that are  
9 subject to pledges or encumbrances described in Section  
10 422.053(b)(ii). All claimants have equal status, and their prior  
11 and preferential claim is superior to any claim or cause of action  
12 against the insurer by any other person, corporation, association,  
13 or legal entity.

14 SECTION 8. Section 422.055, Insurance Code, is added to  
15 read as follows:

16 Sec. 422.055. RULEMAKING AUTHORITY. The department of  
17 insurance may adopt rules regarding the provisions of this chapter.

18 SECTION 9. This Act takes effect September 1, 2021.